UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/WG.14/2/Add.1
8 January 1999

ENGLISH
Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS

Inter-sessional open-ended working group
on the elaboration of a draft optional
protocol to the Convention on the Rights
of the Child on the sale of children,
child prostitution and child pornography
Fifth session
25 January-5 February 1999

COMMENTS ON THE REPORT OF THE WORKING GROUP

Note by the Secretary-General

Addendum

The present document contains comments submitted by the Governments of Brazil and Paraguay and by the International Criminal Police Organization.

GE.99-10053 (E)

Brazil

[Original: English]
[6 November 1998]

1. Brazil has supported the working group on the draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography since its very conception. Brazil deems that the Convention provides the legal framework for the protection of children against sexual exploitation, and an optional protocol is needed in order to expand and make its content more detailed and precise.

2. An optional protocol should therefore cover the following aspects: setting guidelines for domestic legislation and minimum standards for the treatment of child victims; establishment of an international cooperation framework, at both the judicial and administrative levels, to ensure perpetrators of crimes will be punished regardless of the limits of territorial jurisdiction; development of international mechanisms to raise awareness and disseminate information about sexual exploitation and abuse of children; establishment of a cooperation system whose main focus should be rehabilitation of child victims and the eradication of the root causes of such crimes.

3. The optional protocol should also focus on the question of sexual exploitation, in a comprehensive way so as to cover child prostitution, child pornography, the sale of children for sexual purposes and sex tourism. At the domestic level, the Government of Brazil has been adopting a series of measures to fight child prostitution. A national network against sexual exploitation and abuse of children was created in 1996 by Brazilian non-governmental organizations, backed by the federal Government and UNICEF. Simultaneously, some state and municipal governments developed plans of action against that phenomenon. Last year, President Fernando Cardoso launched a national campaign against sex tourism, an action which received support from the associations of hotels and travel agents, air travel companies and the press.

Paraguay

[Original: Spanish]
[7 December 1998]

4. The meetings focused mainly on the definitions of the sale of children, child prostitution, child pornography and child sex tourism. Other topics related to penalization and prosecution; prevention, assistance and compensation; and information, education and participation.

5. The definitions in the draft protocol on the sale of children require further revision so as to produce a wording taking up the points established by both of them, since neither of them should be rejected out of hand. Whereas the first definition is more specific in its references to mechanisms or means such as theft and abduction for the purpose of sale, the second is not only more comprehensive but specifies that the aim is sexual exploitation.

6. One point that does require review in the first definition is the reference to transactions or illicit transfers of persons, inasmuch as any transfer of a person for purposes that violate his rights is an illicit one, as established by universal national and international standards.

7. Other cases of the sale of children, for purposes of non-sexual exploitation, exist and are covered by other treaties or instruments and it is preferable that this draft protocol should deal exclusively with the sale of children for purposes of sexual exploitation so as to limit its scope and thus encourage its future application in view of the large numbers of victims of sexual exploitation throughout the world and the need to have some specific protection rules in addition to the Convention on the Rights of the Child.

8. The wording of the definition of child prostitution is tautologous. The concepts should be arranged harmoniously, with due regard for the fact that, according to the national legislation of some countries, children under 18 have the right of sexual consent and may freely devote themselves to prostitution, without prejudice to the contents of article 34 (a) of the Convention on the Rights of the Child. The definition could thus read:

> "Child prostitution means the act of obtaining, inducing or coercing the unlawful sexual services of a child or adolescent for any form of consideration by a person, including in the context of child sex tourism."

9. The definition of child pornography also requires further revision in order to make its wording more coherent and specific, given the needless repetition of "commercialization/trading or dissemination, or the production or possession for the purposes of commercialization/trading, dissemination or other illicit purpose". The following wording might be recommended:

> "Child pornography means the commercialization, trading or dissemination or the production or possession for these purposes of any materials that constitute a representation of a child engaged in or depicted as engaged in sexual activity or any representation of the body of a child, the dominant characteristic of which is sexual depiction."

10. Despite the consensus reached that sex tourism practices would be covered by the definitions of child prostitution and child pornography, it is advisable to include an independent definition of sex tourism in the protocol so as to clarify still further the relevant concepts.

11. In the chapter on penalization of offenders, the decision to replace the word "activities" by the word "acts" was a well-founded one designed to make it quite clear that such conduct does not need to be systematic in order to be punishable. It would also be desirable to include in the wording of the article elements of penalization, such as incitement, attempt and participation, so as to complete the protocol. The case of children or adolescents who abuse other children should also be included. The paragraph on the punishment of legal persons should be an independent article, since it is a topic that merits separate consideration.

12. More detailed consideration, with reference to private international law, should be given to the jurisdiction of each State over crimes committed inside and outside its territory by nationals or foreigners and those of which a national or foreigner is a victim.

13. Prevention and assistance and compensation to victims of such practices, in addition to generating a commitment on the part of States to adopt or strengthen relevant laws, social policies and programmes, must be geared to addressing spiritual and moral needs so as to reinforce their objectives by sensitizing all the inhabitants of the State, with full participation of children and adolescents in general. For this purpose it is recommended that the term "spiritual and moral needs" be included.

14. Although economic assistance might be interpreted as covered by the word social, the essence of the protocol would not be impaired by the inclusion in paragraph 1 of chapter VI of the request for international cooperation in support of State action.

15. With a view to standardizing the statements contained in the protocol, it would be advisable that a definite choice be made between "practices" and "offences" as opposed to the indiscriminate use of the two terms as if they were synonyms.

16. With regard to information, education and participation, the representative of the Russian Federation made a relevant contribution to paragraph 2 by suggesting the inclusion of the following text at the end of the paragraph: "Without prejudice to the freedom of expression, States Parties shall encourage the responsible participation of the mass media in the achievement of the objectives stated above". This addition is a significant one in view of the importance of the media in helping to create awareness, in the "best interests of the child or adolescent".

International Criminal Police Organization

[Original: English]
[18 December 1998]

17. The draft optional protocol on the sale of children has been studied with a great interest by ICPO-Interpol and we would like to submit the following comments and proposals.

18. This draft protocol is welcomed by our organization which has been engaged, as you certainly know, in the fight against such crimes for several years. The First Interpol Symposium on Offences against Children and Young Persons was held in Lyon in April 1992. ICPO-Interpol has focused its initiatives on concrete and effective action in the form of comprehensive training, providing law enforcement bodies with practical working tools in the fight against all forms of criminality against children.

19. The adoption of an optional protocol on the sale of children, child prostitution and child pornography is a new step in this fight that we can only support insofar as it will give greater efficiency to our action.

20. To achieve this aim, and to ensure a complementarity between this instrument and the action already engaged in by our organization, it seems essential that this draft protocol foresee the use of ICPO-Interpol channels for its efficient implementation. Our advice would be that the use of ICPO-Interpol be inserted in chapter V of the draft protocol, as it was previously, in the first draft.

21. Such an insertion would not prevent reference to other intergovernmental or non-governmental organizations, but would create a specific link with ICPO-Interpol which would strengthen cooperation in this matter.

22. A provision of this type has already been inserted in several United Nations conventions such as the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1990. Such a provision also appears in many other international instruments (such as conventions drafted and adopted by the Council of Europe) and has proved its efficiency. ICPO-Interpol can provide great and concrete help in the implementation of the optional protocol and its expertise would be useful in this respect.